

NATIONAL ADVISORY COMMITTEE
FOR LABOR PROVISIONS OF FREE TRADE AGREEMENTS (NAC)

U.S. Department of Labor
200 Constitution Ave. N.W.
Washington D.C.

Tuesday, March 19, 2013
MINUTES OF MEETING

Committee Members Present:

Public Representatives

Kimberly Ann Elliott, Center for Global Development
Raymond Robertson, Macalester College, Department of Economics
Kevin Kolben, Rutgers University, Business School*
Lance Compa, Cornell University, School of Industrial and Labor Relations*

Labor Representatives

Cathy Feingold, American Federation of Labor & Congress of International Organizations (AFL-CIO)
Benjamin N. Davis, United Steel Workers (USW)
Cindy Estrada, United Auto Workers (UAW)*
Ramón Ramírez, Pineros y Campesinos Unidos del Noroeste (PCUN)*

Business Representatives

Adam B. Greene, United States Council for International Business (USCIB)*
Darryl Knudsen, Gap Inc.*
Ed Potter, Coca-Cola*
Anna Walker, Levi Strauss & Co.*

Members of the public:

Lucy Emerson, Taiwan Economic Office
Stanley Tseng, Taiwan Economic Office
Tequila Brooks, No affiliation
Luanne Glaser, FMCS
Susan Hobbs, BNA Daily Labor Report

**via Teleconference.*

Welcome and introductions

Chairman Raymond Robertson called the meeting to order at 1:00 pm. Mr. Robertson thanked the participants for taking the time to attend the meeting and requested that everyone present introduce themselves. Mr. Robertson then proceeded through the agenda and announced that public comments would be welcome after agenda items were addressed. Mr. Robertson asked for any comments or objections related to the agenda, and none were raised.

Mr. Robertson proceeded to the first item on the agenda: review and approval of the minutes from the September 2012 NAC meeting. Mr. Robertson noted that Mr. Knudsen had previously requested one change to the minutes. Ms. Elliott noted that David Kucera's last name begins with a K. There were no other changes to the meeting minutes, and the minutes were subsequently approved by the committee. Mr. Robertson then moved the discussion to the NAC research subcommittee report, which recommends a focus for OTLA research activities.

Discussion and approval by full NAC of research subcommittee report

Mr. Robertson introduced Kenneth Swinnerton from the Division of Economic Labor and Research (ELR) in OTLA. Mr. Swinnerton discussed the focus of current and planned work of ELR. He noted that this focus largely aligns with the subcommittee's interests in the necessary conditions for the enforcement of labor provisions in trade agreements. In recent years, ELR has sponsored work in some of the issues the subcommittee identifies as part of that focus, notably 1) economic informality; 2) freedom of association; and 3) general labor standards. Mr. Swinnerton then noted that a long-term ELR objective is to inform ILAB technical assistance by identifying methods to identify cost-effective strategies for labor inspection. In the medium term, ELR expects to run experiments on labor inspection strategies. For next year, ELR is planning to commission papers to help identify what is necessary to run these experiments.

Mr. Swinnerton stated that his division is at a sensitive point in the procurement process currently, and thus he could not go into more detail regarding the specifics of the project. However, draft performance work statements were posted as of early spring. One of these draft statements, on incentives and HR capacities of labor inspectors, is still open, so there are opportunities for public comment. Mr. Swinnerton noted that the draft will remain posted for another 90 days before it is automatically archived. The draft can be accessed at www.fbo.gov or on the ILAB website. Mr. Swinnerton ended by recapping his division's long-term objective for informing ILAB's technical assistance: to have a better evidence base around which to help other countries enforce their labor laws.

Mr. Robertson then asked if anyone had comments on the subcommittee's report. Mr. Compa indicated that he was surprised at the framing of some questions in the report. For example, the question "how does freedom of association (FOA) improve conditions without hurting business?" Mr. Compa questioned the assumption that FOA has a negative impact on business

and noted that it is problematic to have a research question that assumes its own answer. Ms. Feingold added that FOA is a right that should be respected regardless of its effect on business. Mr. Compa asked Mr. Robertson why that particular construction was chosen.

Mr. Robertson noted that the question emerged from a discussion with the subcommittee which tried to incorporate everyone's contributions, was framed as a testable hypothesis and is one way of stating a hypothesis that can be evaluated.

Mr. Davis shared Mr. Compa's concern, and said that if the committee is really talking about a serious program of research, then the committee should avoid polemicizing it from the beginning. Mr. Davis suggested that the question is more of a provocation than a research question. Mr. Davis said that the question may be testable, but you can test gravity either by dropping an apple or jumping off a cliff. Both are testable.

Paula Albertson (OTLA) asked if anyone had language that might demonstrate what the impact is while framing the question in more neutral – but still testable – terms. Ms. Elliott noted that while the question poses a testable hypothesis, the answer must be that it depends. Ms. Elliott suggested the alternative “under what conditions does FOA both improve conditions and contribute to productivity.”

Mr. Swinnerton stated that part of collective bargaining is bargaining over who gets the returns from increased productivity. He noted that there have been a lot of questions over this, and that it is difficult to parse out exactly what to measure.

Ms. Elliott said that the productivity data coming out of developing countries is not very good, so this is difficult to measure. Ms. Elliott referenced a more recent study by Gordon Betcherman at the World Bank, which is broader than just FOA, but offers a vast literature survey on the economic effects of core labor standards. Ms. Elliott said that she would send the study to the rest of the group.

Mr. Robertson noted that the committee is open to changing language, rephrasing it, or striking and replacing it.

Mr. Knudsen said that he was not part of the subcommittee, but thought Mr. Swinnerton's suggestion for this research direction would be a good one if the intent were to develop greater evidence that could be used in technical assistance with governments as yet another compelling reason why they should support freedom of association. Mr. Knudsen said he takes Ms. Feingold's point that FOA is a fundamental right and should be valued regardless. Mr. Knudsen acknowledged Ms. Elliott's points and proposed framing the question as: “in what ways and under what circumstances does FOA promote success?” Mr. Knudsen said that if the research agenda is going to be of interest to governments, then that phraseology would put a positive spin on it.

Ms. Elliott asked if the research was intended to guide technical assistance. Mr. Swinnerton responded that, in principle, yes, but not necessarily. The research could guide policy as well. Mr. Swinnerton said that, currently, his office is making more effort to link research to technical assistance, but in the future it could be more policy-focused, as it has been in the past.

Ms. Elliott noted that, due to budgetary constraints, technical assistance projects are not training unions, and that in the future, some importance should be placed on union capacity building. Ms. Elliott cited the example of Cambodia, where early on, workers did not know how to form unions or act as a union.

Mr. Swinnerton said that there are three new union capacity building projects, and that his office is involved in the evaluation components of these, working with grantees to determine what kinds of information they should be collecting, with the notion that information collected in real time is more valuable than that collected in retrospect. Mr. Swinnerton noted that the research agenda is research to inform future technical assistance, but that his office is also trying to strengthen research components of existing projects, meaning that they are collecting this information in a more organized and deliberate way. Mr. Swinnerton cited the examples of DOL-funded projects in Colombia, Peru, and Haiti.

Ms. Feingold suggested that Better Work has probably taken this idea the farthest, but that the missing link in Better Work is that, in Haiti, no one knows what FOA really is. So as the research team is looking to make some links, they could build upon some existing materials in the Better Work program. Future efforts could work with grantees and local partners to strengthen implementation of FOA capacity and practice on the ground. Ms. Feingold said that building on-the-ground capacity would be a huge step and preferable to fly-in trainings and capacity building.

Ms. Elliott then mentioned Emilie Hafner-Burton's ¹update of the David Kucera work. Hafner-Burton has updated Kucera's work into the 2000s, so there is now a time series of up to 15 years. However, Ms. Elliott noted that Hafner-Burton made a mistake in coding FOA, but that it is easily corrected. Ms. Elliott said that she would share it with the group, in addition to the Betcherman article.

Mr. Robertson then asked if there was a specific amendment for the wording in the report. Mr. Kolben said that he preferred the way Mr. Knudsen phrased the question. Mr. Knudsen said that instead of posing the question in the negative, yet another alternative could be phrased as: "in

¹ Ms. Elliott followed up with a March 21 email stating that the book she had in mind with the available data is written by Layna Mosley and the link to the dataset is below:
http://dvn.iq.harvard.edu/dvn/dv/lmosley/faces/study/StudyPage.xhtml;jsessionid=e00f56b2f1d00bdeb4328f3b224?globalId=hdl:1902.1/15590&studyListingIndex=0_e00f56b2f1d00bdeb4328f3b224.

what circumstances does FOA enable business success?” Mr. Swinnerton noted that the question should be precise, such as, “in what ways does FOA increase profits,” because this is more measurable than productivity. Mr. Swinnerton further noted that if you want to show governments that FOA is a win/win, then you need to be persuasive; the mention of profits is persuasive.

Ms. Elliott objected to the concept of including profits, stating that too many things affect profits for this to be a researchable question. Mr. Robertson suggested the following: “In what ways do the improvements in working conditions that come from freedom of association affect business?” The committee then voted on and approved this change to the research question.

Ms. Feingold asked what will happen to the committee’s report and to the research questions. Mr. Swinnerton said that the committee report will be an input into OTLA’s agenda for future research, but due to budget and human resource constraints, it will be a long-term agenda. It will not be possible to answer all questions quickly. OTLA hopes that the NAC will help maintain the long-term interest in the agenda. Mr. Robertson said that these questions will help ILAB set longer term goals. Ms. Albertson reminded the group that reports that come out of full committees are sent to the Library of Congress and become part of the public record.

An unidentified committee member (via teleconference) asked Mr. Swinnerton if all on his staff are economists. Mr. Swinnerton answered that four are economists, and one has an international relations background. The committee member then asked if the research shouldn’t be conducted by people with a labor inspector background, and whether there has been a broader perspective on this. Mr. Swinnerton answered that anytime his office puts out a solicitation, they make every effort to publicize it widely, and that they’re happy to have many applicants to choose from. Mr. Swinnerton suggested that if anyone is interested in commenting, then one performance work statement is still open and available for comment (on www.fbo.gov – solicitation number DOL 131 RI2 1662). Mr. Swinnerton noted that the information was also in an email circulated to the committee around February 22, 2013.

Child labor and forced labor supply chain Toolkit

Mr. Robertson then moved the discussion to the next agenda item, introducing Eric Biel (Acting Associate Deputy Undersecretary – ILAB) and Rachel Rigby of the Office of Child Labor, Forced Labor, and Human Trafficking (OCFT), who presented ILAB’s supply chain Toolkit. Mr. Biel suggested that if attendees would like to participate more interactively, they could do so by accessing the Toolkit on the ILAB website. Mr. Biel said that the Toolkit is a thorough, comprehensive, accessible, and easy-to-use set of guidance tools for any company wishing to address issues of child labor in global supply chains. The Toolkit consists of eight modules, covering topics such as stakeholder engagement and independent monitoring. The Toolkit is *not* a statement that ILAB believes that voluntary regulation is the best way to address some of these underlying issues; it is intended to share best practices. Mr. Biel further noted that civil society

partners have begun to share the Toolkit with their local partners, and are beginning to apply it in a few places, for example, in Nepal. Mr. Biel said that this is the first such tool developed by the U.S. Government.

Ms. Rigby then provided an introduction to OCFT. OCFT funds grants to combat child labor internationally. To date OCFT has provided over \$800 million to fund projects in more than 80 countries around the world, and funds new grants on an annual basis. Ms. Rigby explained that another major element of OCFT's portfolio is reporting on child labor and forced labor through the Trade and Development Act (TDA) report, which contains a profile for each of 144 countries and their child labor situation, as well as their efforts to combat child labor. OCFT also produces the Trafficking Victims Protection Reauthorization Act (TVPRA) List of Goods Produced by Child Labor or Forced Labor. Ms. Rigby noted that both publications have been tools for engagement with a variety of stakeholders, including governments and the business community, particularly the list of goods first issued in 2009. The TVPRA of 2005 also required ILAB to engage with the business community to come up with standard practices to reduce the likelihood that they would use goods produced with child labor – the genesis of the Toolkit.

Ms. Rigby then proceeded to walk participants through the content of the Toolkit website. Ms. Rigby noted that the Toolkit is organized around the idea of a social compliance system, with eight steps. Ms. Rigby also noted that child labor cannot be addressed by companies outside of the context of addressing all core labor standards.

In order to give participants a sense of what the steps in the Toolkit look like on the web, Ms. Rigby said that each step begins with some learning objectives and key terms. The target audience of the Toolkit is companies that have not done much social compliance yet. Within each segment there are various links to other resources, quotes from external guidance, company examples (although Ms. Rigby noted that ILAB does not endorse these companies, but wanted to highlight some companies' efforts that ILAB considers good approaches). Ms. Rigby noted that companies have approached ILAB in recent years, asking what to do if they encounter child labor in their supply chain. Ms. Rigby provided an example in Section 6 of the Toolkit, which addresses remediation of child labor in supply chains found and how to prevent recurring problems. Ms. Rigby ended the presentation by highlighting the "Email ILAB" function, which allows users to contact ILAB directly.

Ms. Rigby then opened the floor to questions. Ms. Elliott asked if there are any connections to the USDA Consultative Group Guidelines, as the Toolkit sounds familiar. Ms. Rigby answered that, yes, participants might recognize the eight steps, similar to guidelines of the USDA Consultative Group. Ms. Rigby then provided some background information: in the Farm Bill of 2008, there was a requirement that USDA convene a consultative group that included the DUS from ILAB. The group was formed to eliminate the use of child labor and forced labor in imported agricultural products. The group met for a period of two years, and developed recommendations that were submitted to the Secretary of Agriculture. The Secretary then

promulgated the guidelines for public comment as USDA's Guidelines on the Elimination of Child Labor and Forced Labor in Agricultural Products. The Consultative Group is no longer active, but the guidelines themselves are very similar to what is presented in the Toolkit.

Ms. Elliott asked if the guidelines produced under the Consultative Group are now subsumed in the ILAB Toolkit. Ms. Rigby responded that the two are still separate, but the Toolkit is trying to be consistent with the guidelines issued by the Consultative Group.

Mr. Potter interjected that the Toolkit is a very solid framework and that Coca-Cola has a program called Pass It Back that tries to pass elements of this framework back into their supply chain. The problem for Coca-Cola, Mr. Potter continued, is the mapping of the supply chain, particularly in agriculture. Mr. Potter then said he would be grateful if ILAB could develop a toolkit just for mapping a supply chain.

Mr. Biel provided the example of groups dealing with conflict minerals who have demonstrated that even some of the most daunting supply chains in remote corners of the world may be mappable. Mr. Biel also noted that this issue is really under State's jurisdiction, not DOL's jurisdiction.

Mr. Robertson asked if ILAB could incorporate the Social Hotspots Database, which is an online tool designed to help corporations map out supply chains and identify where in supply chains they might have some concerns. Mr. Biel said that he had not heard of this website, and Mr. Robertson said that he would provide the link. Mr. Robertson then asked for any other comments, and none were raised.

Mr. Knudsen acknowledged the robustness of the tool and thanked the staff for its work on it.

NAALC Update

Greg Schoepfle (OTLA) provided an update on the NAALC, as well as some information on recent interactions with Mexico. Last July, there was an election in Mexico, and the government transition occurred in December 2012. A new team was formed at STPS, and ILAB has made contact with its new counterparts in STPS. Dr. Luis Stein is the new International Affairs Chief, replacing Anel Valencia. The new contact for hemispheric coordination is Dr. Luis Santander, replacing Eduardo Velasquillo Herrera. The old team attended the December 2012 round of the TPP negotiations, and the new team was in Singapore for the most recent March 2013 round. The TPP negotiations have provided a new opportunity to interact on the side with Mexico. In February 2013, the new STPS team came to the U.S to consult with ILAB and USTR. Dr. Stein visited DOL to meet with Acting Deputy Undersecretary Carol Pier and ILAB staff, and there was a good exchange at that meeting. Ms. Pier raised some issues related to the recent labor law reform in Mexico. She noted that there were some good steps taken (e.g., nondiscrimination and sexual harassment, requirements on third party contractors), but some additional reforms still need to be taken (e.g., secret ballot union elections, protection contracts, and delays in union

registration). DOL looks forward to continued engagement with Mexico. The new STPS team expressed their interest in programs related to the informal sector and ways to bring workers into more formal employment relationships.

Mr. Schoepfle mentioned that an inter-agency group has been formed for U.S. engagement with Mexico, focusing more on economic issues rather than drugs. ILAB hopes the new group will have more of a labor focus as well, but most of our outreach will come through the NAALC or on a bilateral basis with the STPS.

Mr. Schoepfle noted that, in terms of the NAALC itself, ILAB has not had any substantive discussions as to what will happen with the NAALC when TPP comes into play. He assumes it will co-exist within the TPP framework. When in Singapore, there was a meeting with NAOs which addressed some of the more immediate problems with dealing with the Secretariat and established virtual communication for day-to-day NAALC business.

Mr. Schoepfle said that he hoped to be able to report more progress by the next meeting, but noted that dealing with the new STPS team will be big change.

Mr. Schoepfle added that the new Mexican administration has enacted a Pact for Mexico, a political document signed by the new president which lays out a plan for addressing a set of issues, including provision of unemployment insurance and universal social security. Mr. Schoepfle said he would send a copy of the Pact to the Committee members. Mr. Schoepfle ended by saying that Mexico is clearly a country that we will want to engage with more closely.

Ms. Albertson noted that ILAB shared the advisory committee report regarding the NAALC with the team in Mexico.

Ms. Feingold asked if Mexico would have stronger labor obligations under the TPP.

Mr. Schoepfle responded that, if both parties sign on to stronger language in the TPP, then submissions would probably occur under the higher labor standards of the TPP. But the NAALC might be a preferred venue for certain submitters.

Ms. Feingold noted that the AFL-CIO strongly supports the view that Mexico needs to be seen through a broader lens, beyond security issues. Ms. Feingold also noted that the AFL-CIO strongly supports this new economic focus, but that labor and labor rights issues must absolutely be included. Given the TPP, employment and labor issues will be at the forefront. Ms. Feingold said that we need to connect the dots between security, human security, and economic issues.

Mr. Schoepfle said that this process has begun, and that labor is at the table. DOL has gotten its foot in the door and has inserted some language on labor issues into the interagency discussion. Mr. Schoepfle said that he will keep the Committee apprised as events unfold.

Mr. Davis asked if the status of any of the submissions came up in discussions with the new STPS team. Mr. Schoepfle responded that nothing came up regarding submissions on either side, and that DOL has not received anything formally from Mexico on that note.

Mr. Robertson requested that anyone with comments on the NAALC formally submit them to the Committee as action items.

Ms. Feingold requested a consultation on Mexico and research questions.

Country updates and submission reports

Bahrain: Amit Pandya (Chief of Staff – ILAB) said that ILAB published a report on the submission in December 2012. Among other things, the report called for cooperative consultations with the Government of Bahrain (GOB) regarding concerns the USG raised on Bahrain’s compliance with international labor standards, with a focus on freedom of association and discrimination. ILAB has been engaged in a process within the USG to move forward on some of the recommendations in the submission. The USG has also been involved in rudimentary discussions with the GOB – prior to formal consultations – that have not yet addressed any of the substantive issues. Mr. Pandya then asked if the committee had any questions.

Ms. Feingold asked if a formal letter had been sent to the GOB, to which Mr. Pandya replied that one had not been sent. Ms. Feingold then asked about a timeline. Ms. Pier responded that she hopes it will happen soon, and that the USG is trying to engage in informal dialogue prior to consultations in order to pave the way for a positive response to USG requests. Ms. Pier noted that, while the USG has been trying to have those conversations with the GOB, the USG will not delay a formal request for consultations if it is unable to hold informal conversations with the GOB.

Ms. Feingold noted that the State Department has had some engagement, and asked if DOL has been involved in the back and forth between the GOB and State. Mr. Pandya responded that DOL has not been present, but knows what has transpired in these meetings. DOL has also closely followed developments relating to the complaint to the ILO governing body. The regional bureau at the State Department and Embassy Manama are trying to have a more substantive conversation with the GOB.

Ms. Feingold mentioned that the vice president of the teachers’ union has been fired, and other workers have been fired for organizing alternatives to BLUFF-affiliated unions. Ms. Feingold noted that these are key concerns for the AFL-CIO, and that they would like more information about these concerns. Ms. Feingold offered that if there is anything her organization can do to keep things moving, please let them know.

Ms. Pier noted that the recommendations in the submission report are intended as a roadmap for eventual consultations, and that these include provisions for recent developments in order to create space for continued engagement post-publication of the report.

Mr. Robertson asked if anyone had further comments, and none were raised.

Dominican Republic: Mr. Biel explained that ILAB has completed a draft report, which is in the process of inter-agency consultation with USTR colleagues. Mr. Biel said he hopes ILAB is in the end-game of completing work on the report. ILAB required an extension from the original time period given the circumstances faced in the sector, and the amount of documents received from the submitter, as well as challenges in information gathering and verifying information on the ground. In short, Mr. Biel said, ILAB is getting there. Mr. Biel noted that Josh Kagan is on detail at USTR for five months, and that Ben Williams is filling in for Josh in the meantime. Once the draft is through the inter-agency process, ILAB will issue the report in the next few weeks or months. Mr. Biel promised to keep the committee updated on progress, and closed by saying that ILAB wants to ensure a very tight report as far as adhering to the legal standards under CAFTA-DR.

There were no questions from the Committee regarding the Dominican Republic.

Honduras: Halima Woodhead (OTLA) provided a brief description of the submission. Ms. Woodhead said that DOL received the submission from the AFL-CIO and 26 Honduran organizations. The submission alleges failure to effectively enforce labor laws regarding freedom of association, minimum working age, child labor, minimum wage and hours worked, and occupational safety and health under Chapter 16. An extension of time was necessary given the scope of the submission and the large volume of information received. So far, ILAB has reviewed 1,200 documents. Ms. Woodhead said that she is working full-time on this submission. The Honduras team visited Honduras in July 2012 to meet with stakeholders. In December 2012, the team met with stakeholders again and interviewed more workers. Ms. Woodhead also mentioned that, regarding engagement, a tri-partite commission has been working since August to resolve labor issues. Ms. Woodhead said that the Government of Honduras (GOH) has noted that it is developing draft laws, which will be cleared by the tri-partite review commission. Ms. Woodhead then opened the floor for questions.

Mr. Davis asked, what is the tri-partite review process?

Ms. Woodhead responded that it is a process where the government of Honduras would consult with civil society and labor about the draft laws and engage with them before forwarding to the Congress.

Ms. Albertson noted that the ILO has played a role in the drafting process already.

Ms. Feingold asked if ILAB was waiting to see how the tri-partite process plays out.

Ms. Pier said that the timeline is not linked to the tri-partite review process, but was extended due to the large number of documents, which required thorough review. The time ILAB is taking is not linked to the outcomes of the tri-partite process – ILAB is moving forward regardless.

Ms. Feingold said that AFL-CIO's partners are eager to have the report.

Mr. Davis said that, in the case of Lear, the company has intervened in a positive way, in terms of talking with local management about reinstating fired workers, entering into collective bargaining agreements, and recognizing unions. However, as of today, Lear hasn't actually taken action on these items. So, there is some good news. Within this framework, employers are starting to respond.

Ms. Estrada said that Lear has really stepped up in terms of trying to make this happen, but that U.S. management did not attend the last meeting, for reasons unknown to Ms. Estrada.

Ms. Albertson said that ILAB would appreciate any updates that the Committee could provide.

Ms. Estrada said that she would get this information to Ms. Albertson.

Mexico: Sandra Soderstrom (OTLA) provided updates on Mexico submissions. A presidential decree closed Luz y Fuerza, resulting in 44,000 workers losing their jobs. The union (SME) alleges that this closure violated the NAALC. OTLA is currently in the process of drafting the submission report. On October 9, 2012, an appellate court ruled that the executive decree dissolving Luz y Fuerza could not use *force majeure*. The court also ruled that the other power company involved was a substitute employer. The case was appealed to the Supreme Court, wherein the court ruled against SME on both issues. On February 1, 2013, the submitters notified the OTLA that they will be submitting additional information based on recent developments.

Mr. Davis said that, obviously, his organization is very concerned with the Supreme Court decisions. In 2010, they did the same thing with the Cananea ruling on *force majeure*. The term "act of God" has lost its meaning, and they have created a really broad exception that really swallows the rule. The Supreme Court has given carte blanche to the executive branch. This was the first blow, but now we are seeing education reform preceded by the arrest of a union leader, not saying she has the perfect track record, but the timing was not coincidental and was politically motivated. Telecoms reform is next in line, and will probably include an attempt to eliminate the telephone workers' union, a member of the global trade union movement, and one of the older unions. Next is petroleum, where the union does not have a good international reputation, but what will happen to freedom of association rights when reform comes? Reforms might be necessary, but there is a difference between doing it democratically and imposing it from the top, which is what we're seeing here.

Guatemala: Carlos Quintana (OTLA) told the Committee that ILAB continues to try to engage with the Government of Guatemala (GOG) to address issues regarding the enforcement of labor

laws. The issues have not changed from the initial request for consultations: failure to effectively investigate violations; once investigated, failure to take effective action to address those violations; and labor courts' failure to enforce court orders in favor of workers. Those are the issues that frame the USG's engagement with the GOG. Since the last Committee meeting, the one update is that the arbitration panel has been constituted that will resolve this matter if bilateral talks fail. At this stage, discussions focus on reaching a comprehensive enforcement plan with specific benchmarks and timelines. This remains the focus. Since the last Committee meeting, the USG had a high-level round of meetings with the GOG. Some progress was made as a result of those discussions. Subsequently, the arbitration panel has not begun to engage in its work. Certain key issues remain outstanding and prevent the USG and GOG from reaching an agreement. Mr. Quintana then said that he could not provide more information due to the confidential nature of the discussions.

Ms. Elliott then asked about the timeline. Mr. Quintana responded that the USG would submit a brief within seven days once the process is turned over to the arbitration panel. After that, the GOG would submit a rebuttal brief within 35 days of the USG brief. Once the briefs process concludes, the panel has up to 180 days to issue its initial report, and then 30 days to issue its final report.

Ms. Feingold asked about the timeline for the current discussions under way. Mr. Quintana responded that there is no specific deadline on the table at this point, but there will be in the near future when the USG knows whether this round of discussions will be fruitful. But there is no specific date by which the USG is committing itself to reaching this decision.

Ms. Feingold reminded the Committee that there are other processes in progress that depend on this, and suggested that there should be a strong attempt to close this matter.

Mr. Quintana said that in the next few weeks, the USG will have a much clearer sense as to where this will end up (resulting in either an action plan or an arbitration panel).

Ms. Pier agreed that it is important to move this matter as quickly as possible. Ms. Pier stated that the USG does not see this as an open-ended process, but is working as hard as possible to try to get an enforcement plan in place, because this would be best for everyone. But if it becomes clear that this is not possible, then the process will move to arbitration.

Colombia: Brenna Dougan (OTLA) provided a summary of recent developments in Colombia. As part of the USG's follow up to the action plan, Ms. Dougan, Ms. Pier, Carlos Romero (USTR) and Bennett Harman (USTR) recently returned from a trip to Colombia, where the group met with stakeholders. Ms. Dougan stayed on for an OCFT scoping mission. During that scoping mission, Ms. Dougan met with unionists and received a lot of information on current developments. Ms. Dougan said that the delegation received some good news from the Colombian Ministry of Labor (MOL), but the delegation also recognized that challenges remain.

The Attorney General's office highlighted that threats to union leaders are still an issue. Ms. Dougan recalled the attempted murder of a unionist while she was in Colombia on the scoping mission. Ms. Dougan also spoke with the Attorney General's office about the murder of another unionist. The Attorney General's office has a new context and analysis unit, some members of which are dedicated to investigating anti-union violence and threats. The goal of this new unit is to make sure crimes are analyzed in context and that if crimes are linked to larger trends and/or to each other, the unit will more easily be able to determine that. The USG will continue to follow up with the Government of Colombia to see how this plays out.

Ms. Dougan noted that the MOL put out a new law in January, which has been endorsed by the National Union School. The new law gives the MOL power to apply larger fines for labor law violations, and addresses formalization agreements to get workers directly hired by companies instead of hired through abusive contracting arrangements. DOL is working with the MOL on details and how this law will play out in practice. The USG is continuing to hear concerns that cooperatives have turned into another form of abusive contracting. Ms. Dougan also said that DOL is still following up on fines imposed, particularly a \$1 million fine that is in the process of being collected.

Mr. Robertson said that the Committee would like to move on to the Korea – U.S. LAC, and noted that the public session that morning had been interesting.

Korea – U.S. LAC

Donna Chung (OTLA) provided an overview of the Korea – U.S. LAC meeting. The first Korea – U.S. LAC meeting was held yesterday and today. There was a large delegation (10 individuals) from the Republic of Korea's (ROK) Ministries of Labor and Foreign Affairs and Trade. Two large areas were discussed: the cooperative mechanism and following up on labor issues of concern that had been raised with the ROK during the negotiations, as well as in ILAB's Meaningful Labor Rights Report submitted to Congress.

There was a preliminary meeting in January with the Koreans. This was the first LAC hosted in the U.S. During that meeting, the Koreans put forth a range of potential cooperative areas for the LAC. Among them, the group chose potential cooperation between USG and ROK Bureaus of Labor Statistics to improve how they can exchange information and look into issues of employment. The impact of FTAs on employment and potentially youth employment was discussed as well. The other area discussed was global supply chains, which was proposed in January. The group wanted to address the issue of labor standards in global supply chains, given its complexity and the use of multi-national corporations in both countries for the sourcing of goods. Issues have been raised with some Korean firms in different countries. The group noted that there are companies in both countries that have a responsibility in this regard and that there is pressure from consumers and brands for labor standards while trying to maintain a low unit cost. This is often more challenging because of a lack of enforcement of labor laws in the host

countries, but there are also issues related to individual companies and cultural differences. This appears to be a new area for the Korean Government. They are very interested and asking what is the role of governments in the complex environment of global supply chains. Ms. Chung then said that ILAB would appreciate the Committee's input on these subjects.

Timothy Wedding (USTR) said that this could be a particularly good area for the U.S. and the ROK to engage, and hopes to make progress on this point.

Mr. Biel noted that he was pleased that Mr. Davis, Ms. Feingold, and Mr. Robertson were able to attend this morning's LAC session. Mr. Biel noted the USG's excitement on the supply chain front. Mr. Biel said he spoke with Dr. Na and his team after the meeting, and they will follow up with the USG on some of the questions, including the one from Ms. Feingold, that weren't fully addressed in the LAC.

Ms. Pier underscored the point made by Ms. Chung, that the team is inventing this as it goes along. The approach of one government addressing another government's companies' role in the global supply chain is new. Ms. Pier requested input from the Committee members on what this might look like, recognizing the USG's constraints as a government as opposed to a company developing codes of conduct. Ms. Pier stressed that the USG wants to get this right, but does not have a lot of reference points on this particular issue.

Mr. Davis said that part of the playbook is the OECD Guidelines that are comprehensive and include the Ruggie Principles. If, through the cooperative processes discussed here, corporations begin to engage in voluntary measures, that's great, but it is worth looking at the OECD framework. Mr. Davis continued that the Committee was just discussing Mexico, another OECD country with a lot of problems. Mr. Davis asked, what is the team doing in the context of Korea that might be relevant in the context of Mexico, including a recent complaint involving America Móvil and their activities?

Mr. Greene asked if there are more specific areas that the team is looking at, and if this discussion is referring to Korean factories in Korea or outside of Korea.

Ms. Chung responded that the discussion referred to Korean companies with factories outside of Korea, and that apparel was not specifically mentioned.

Mr. Biel noted that, when the team did a webinar with Haiti HOPE II, some people from Korean multinational clothing manufacturer Sae-A were also on the call. On a recent trip to Bangladesh, two of three of the most hot button issues there involved Korean-owned producers. This idea of engaging Korean companies outside of Korea is based on the fact that the Korean MOEL has developed some programs for engaging with their own private sector, and a number of other issues under a broader framework of the OECD guidelines. And, of course, this includes implementing the Ruggie Principles. Mr. Biel offered to discuss this further in the future.

Mr. Greene said that, in order to avoid duplication, the ILO Better Work program has an active outreach program including Korea and Korean factories. If the target really is apparel factories outside of Korea, then Mr. Greene encourages the team to look at ILO efforts.

Ms. Chung responded that Better Work is something that was discussed with MOEL. The Better Work team had just visited MOEL when Ms. Chung visited Seoul, so there has been outreach to the Korean MOEL and Korean enterprise.

Ms. Albertson said that, on that note, perhaps some participants in today's meeting could send statements with tried and true best practices.

Mr. Greene responded that it depends on what one is looking for in this area, but in terms of tools that can be implemented with suppliers, Mr. Greene does not see the OECD Guidelines as being relevant in that context. Mr. Greene said that the OECD Guidelines are general and context-less by design, and cannot be implemented in a factory setting.

Ms. Feingold said that AFL-CIO has worked with the Koreans on Mexico issues before, so this would not be completely new. Specifically, the AFL-CIO has worked on *maquila* issues with the Koreans. Nevertheless, Ms. Feingold said she welcomes government-to-government interaction, even though her organization has brought up concerns with Sae-A before. Ms. Feingold encouraged DOL/MOEL to engage, and looked forward to some interesting conversations.

Ms. Pier said that guidance like this from Committee members will be helpful. Ms. Pier noted that there are currently standards, processes, knowledge, and practice, but not very much in terms of what is a useful and practical and feasible role for a government to be playing. Ms. Pier asked Committee members to think of their past experiences and recall at what point a USG or ROK intervention would have been helpful. Guidance like this will be helpful to DOL.

Mr. Biel said that he would welcome Committee members' experience on issues like the adequacy of ROK government mechanisms, including the NPC system. While the Koreans seem receptive, Mr. Biel noted that much work is left to be done. The future could represent a change in the Koreans' thinking from a few years ago. Mr. Biel looked forward to the Committee members' input.

Ms. Feingold said that she would like to see a joint report from the USG and GOK on labor chapter implementation, and said that space must be created for this conversation to happen. This might come about by doing a joint research project. Ms. Feingold noted that there are a lot of cases out there that could be used as case studies.

Ms. Chung said that the team wants to make clear to the Koreans that they want to make this concrete, and perhaps test the model using pilots to zero in on specific contexts in countries.

Mr. Greene said that the agreement's focus is on the enforcement of national laws at home, and does not distinguish between multinationals and these companies. Mr. Greene said that he is still

trying to relate the trade agreement relationship with the supply chain relationship. He said that he is supportive of efforts to share practices between governments, but thinks that what happens should relate to the obligations under the trade agreement.

Ms. Chung noted that the intent is to explore ways of cooperating with the GOK, and that the FTA is the context in which companies from both countries are operating.

Mr. Greene replied that his concerns are that the OECD guidelines apply only to multinationals.

Ms. Chung said that the LAC also discussed various labor issues, and that she would provide an update on that conversation. There were three main issues discussed. The first issue discussed was the obstruction of business clause in the criminal code. The USG asked for updates, particularly related to the Ssang Yong case.

Ms. Feingold asked if Ms. Chung received any good answers, noting that Ms. Feingold had not.

Ms. Chung said that the Koreans told her they met with unions prior to coming to the U.S., and that they would return to Korea and have another meeting with the unions and follow up on the Ssang Yong case.

Mr. Wedding said that the Koreans have a new team and a new administration, so the Korean MOEL said they would have to check on some of these issues. The USG told the ROK that these were issues about which the USG would like to have continued dialogue.

Ms. Chung noted that there is a lot of follow up for the USG to do. She noted that the second issue is the issue of non-regular workers. Reforms are still in the legislative process, but this appears to be a priority for the new ROK administration. The third issue is the migrant worker issue. There is no particular update on that either, but the USG will follow up.

Trans-Pacific Partnership

Mr. Schoepfle provided an update on the Trans-Pacific Partnership. Last week, Mr. Schoepfle was in Singapore for the 16th round of the TPP along with Lewis Karesh (USTR) and Matt Levin (SOL). The team participated in another round of labor chapter negotiations and the labor chapter negotiating group has made substantial progress in 16 rounds. The next round is scheduled for Lima, Peru, at the end of May. Mr. Schoepfle expects that the team will isolate where the political differences are that will have to be addressed as the agreement is finalized. But at this point, the team feels it has made substantial progress. It is also clear to negotiators that leaders want an agreement to be finished by the end of this year, so Mr. Schoepfle anticipates increased pressure for all negotiating groups to try to resolve differences, or at least isolate where those differences are. At this point, Mr. Schoepfle anticipates that some negotiating groups have made more progress than others, and thus will not attend the next meeting. Mr. Schoepfle also thinks that the negotiators are starting to move into the final phases of negotiations. The U.S. team continues to reach out to Vietnam, Brunei, Malaysia, and Mexico to consult about

particular labor concerns, and to prepare for the USG's Meaningful Labor Rights Reports. Mr. Schoepfle said that the team has made substantial progress.

Mr. Greene asked if Mr. Schoepfle could characterize any disagreements on labor chapters.

Mr. Schoepfle said that, in terms of fundamental obligations, the team is approaching many of the countries that have joined in terms of stronger language, but there are some countries that have not made the move toward stronger labor language yet. However, the few remaining countries are more and more isolated, and will have to make a decision as to whether or not to opt in with the rest of the group.

Ms. Feingold noted that there are broader concerns around the TPP, such as Japan's entry into it. Ms. Feingold said that the Committee need not discuss these concerns now, but wanted to note for the record that there are many concerns.

Ms. Estrada echoed Ms. Feingold's concern with the Japanese entry into the TPP and the labor standards there.

Mr. Schoepfle said that Japan has not formally joined the TPP, so any entry on their part would be handled similarly to the way the accession of Mexico and Canada, meaning that there will be opportunities for public comments on Japan's entry into the TPP. Mr. Schoepfle said that he would welcome the Committee's views or statements on the issue. Mr. Schoepfle also noted that, at this point, the TPP has a full table, with 11 parties, so any enlargement would require approval by all parties.

Other Items (TIFAs)

Carlos Romero (USTR) told the Committee that he would speak about two issues: 1) the recently announced TIFA with Iraq and 2) an older TIFA with the GCC (Gulf Cooperation Council). The TIFA does not confer tariff benefits, but is just an agreement to engage in high-level talks. This allows the USG to engage other countries about certain problems we might have with them in trade areas. Countries are often reluctant to enter into a TIFA.

Mr. Romero said that the TIFA with Iraq was signed in 2005, but sat in the Iraqi parliament for years until it was recently announced. Iraq is undergoing a serious crisis of government and stability, including some key labor issues that would replace Hussein-era laws from 1987.

Regarding the GCC TIFA, Mr. Romero noted that it includes two FTA countries – Bahrain and Oman – but the TIFA does not supersede or supplant these FTAs. Rather, the TIFA is a way to engage every country on the GCC. The GCC has been given legal authority by each country in it that enables the GCC to speak as a unit to outside countries. USTR has inserted the strongest language possible into the TIFA, to uphold labor provisions in the ILO declaration. The timing, however, was unfortunate in light of the Bahrain submission report.

Ms. Feingold stated that if there are such announcements of TIFAs, then these announcements should happen at the NAC meeting. The NAC meetings should be a place where the Committee can discuss these issues. Regarding the GCC, Ms. Feingold said that in Qatar there is currently a discussion of migrant labor rights happening there. Ms. Feingold said that if the TIFA is a space for dialogue and consultation, then she hopes that USTR will engage them on some of the concerns that have been articulated to the Government of Bahrain. Ms. Feingold said that she would circulate to the entire NAC the AFL-CIO's comments on the Iraq TIFA. The AFL-CIO sees this as an opportunity to refocus on trade union laws in Iraq. Ms. Feingold noted that her general sense is that things are not moving forward in that country.

Mr. Romero said that in the case of Jordan – an FTA country – the USTR signed a government-to-government implementation plan to improve conditions for foreign workers in factories, in addition to improving labor rights. Mr. Romero will be traveling to Jordan soon to roll this plan out with some of the brands involved, and promised to keep the NAC informed and send the plan out to the entire Committee.

Mr. Davis brought up another item regarding the research agenda, saying that he can't help but mention the lamentable fact that Bureau of Labor Statistics (BLS), in its international labor comparison series, eliminated the International Labor Comparisons program. Mr. Davis said that the series is invaluable to understanding what is really going on in the global economy. The manufacturing cost index is not as useful, because it does not indicate what is actually occurring. Mr. Davis asked if there was any way to bring back the International Labor Comparisons program.

Mr. Robertson added that he strongly echoes Mr. Davis's sentiments.

Mr. Davis asked the NAC when they were planning to discuss Europe, and said that the discussion will open some interesting, but complicated, issues regarding the research agenda. Mr. Davis looked forward to these interesting discussions on empirical research.

Mr. Romero said that USTR has not sent out the 90-day congressional notification, at which point a Federal Register Notice would also be issued, soliciting public comment. These steps would be taken before even sitting down with the EU for the first round of talks.

Ms. Elliott asked why trans-Pacific is hyphenated, while transatlantic is not.

Mr. Robertson then asked the public if there were any comments. No comments were made.

Mr. Robertson then asked the Committee to create a list of action items based on the meeting. The following are the action items on the list:

- Ms. Feingold suggested that labor issues be granted a more prominent place in inter-agency discussions on Mexico. Mr. Schoepfle replied that labor issues are indeed part of current discussions.

- Mr. Davis suggested that the Committee put the informal sector back on the research agenda, and that it might be useful to look at past research and current developments.
- Ms. Feingold requested a joint report on the implementation of the labor chapter in the KOR-US FTA.
 - Mr. Schoepfle requested a clarification regarding the requested joint report.
 - Mr. Robertson explained that the report would be a joint report on the labor chapter implementation, possibly using case studies, or consisting of frequent updates.
 - Mr. Davis suggested that the joint report consist of writing up and making public whatever discussions are had regarding supply chains and labor chapter implementation.
- Mr. Robertson asked the Committee to send comments and suggestions regarding the supply chain issue to OTLA, and requested that all present look at the global social compliance program website, where dozens of tools are posted that relate to the issues discussed.

Mr. Robertson reminded the Committee that the next meeting would occur in six months, but that no date has been set yet.

Mr. Kolben offered to work on a sub-committee on Korea issues, but will wait until information is passed around among the Committee.

Closing Remarks

Mr. Biel thanked Ms. Albertson and Ryan Carrington (OTLA) for pulling together the NAC meeting, and thought it productive to schedule the LAC and NAC back-to-back on the same day. Mr. Biel noted that this was the second consecutive meeting in which everyone was present, either in person or via telephone. Mr. Biel said that DOL has a very busy agenda, and expects news on some of the submissions in the next few months and ILAB will do its best to keep the Committee informed.

The meeting was adjourned at 5:10 pm.